

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS HONABLE,

Defendant.

CR. NO. S-0095-0240 EJG

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE

Defendant, a federal prisoner proceeding pro se, has filed a motion seeking multiple forms of relief: modification of term of imprisonment; reduction of term of imprisonment; downward departure; and immediate release. For the reasons stated below, the motion is DENIED.

BACKGROUND

Defendant pled guilty on March 18, 1996 to one count of possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). He was sentenced to a term of 121 months imprisonment and 60 months supervised release. The term of supervised release commenced October 8, 2004. On October 26,

1 2006, a petition alleging a violation of supervised release was
2 filed, charging defendant with a new law violation (possession of
3 powder and rock cocaine and marijuana), failure to report a
4 change of residence, and failure to follow a probation officer's
5 instructions. Pursuant to his admissions, defendant's term of
6 supervised release was revoked and he was sentenced March 2, 2007
7 to a further term of imprisonment of 60 months.

8 On March 3, 2008, defendant filed the instant motion seeking
9 immediate release, a downward departure and a modification or
10 reduction of his term of imprisonment, contending that a recent
11 amendment to the United States Sentencing Guidelines which lowers
12 the base offense level for crack cocaine applies to his case and
13 results in a reduction of his sentence. Specifically, defendant
14 argues that a November 1, 2007 amendment to the sentencing
15 guidelines, made retroactive December 11, 2007, and effective
16 March 3, 2008, operates to, at the very least reduce his term of
17 imprisonment, and at best, mandate his immediate release from
18 custody.

19 While the court agrees that the guidelines were amended to
20 reduce the base offense level for crack cocaine, which may result
21 in the reduction of an **original** term of imprisonment, the policy
22 statements relating to the amendment, do not provide for a
23 reduction in a term of imprisonment imposed as the result of a
24 violation of supervised release. Rather, application Note 4 to
25 U.S.S.G. § 1B1.1 limits the application of the amended guideline
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1 to the term of imprisonment imposed in the original sentence.

2 ***"This section does not authorize a reduction in the term of***
3 ***imprisonment imposed upon revocation of supervised release."***

4 U.S. Sentencing Guidelines Manual § 1B1.1 cmt. app. n.4 (2007)
5 (emphasis added).

6 In the instant case, defendant completed his original term
7 of imprisonment in October of 2004. He is presently incarcerated
8 for a violation of supervised release. By its terms, the policy
9 statements interpreting the amendment from which he seeks to
10 benefit preclude its application. Accordingly, his motion is
11 DENIED.

12 IT IS SO ORDERED.

13 Dated: April 22, 2008

14 /s/ Edward J. Garcia
15 EDWARD J. GARCIA, JUDGE
16 UNITED STATES DISTRICT COURT
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